

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:06cv343-03-MU
(3:04cr138-1-MU)

THERESA M. LEWIS,)
)
 Petitioner,)
)
 v.)
)
 UNITED STATES OF AMERICA,)
)
 Respondents.)
 _____)

ORDER

THIS MATTER comes before the Court on initial review of Petitioner's Motion to Vacate, Set Aside Or Correct Sentence under 28 U.S.C. § 2255, (Document No. 1) filed August 1, 2006.

A review of the record reveals that on February 21, 2006 Petitioner was sentenced to 36 months imprisonment followed by two years of supervised release. Petitioner filed a Notice of Appeal on March 17, 2006. (Court of Appeals Case No. 06-4295.) On April 12, 2006 the United States also filed a Notice of Appeal. (Court of Appeals Case No. 06-4383.) By order dated July 12, 2006, the Fourth Circuit Court of Appeals consolidated the two appeals into one case for purposes of briefing and oral argument. (See Doc. No. 67 in 3:04cr138.) Petitioner filed the instant Motion to Vacate on August 1, 2006 alleging errors with respect to her plea agreement. The Court notes, however, that Petitioner's appeal has not yet been heard by the Fourth Circuit and as such this Court has no jurisdiction to handle Petitioner's Motion to Vacate. See Bowen v. Johnston, 306 U.S. 19, 26-27 (1939). Therefore, Petitioner's Motion to Vacate is dismissed without prejudice.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that Petitioner's Motion to Vacate (Document No. 1) is **Dismissed without prejudice** as this Court is without authority to entertain Petitioner's Motion..

SO ORDERED.

Signed: August 10, 2006

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

